parative method, availing himself of the law of other countries so far as it throws light upon the matter under discussion. The author has full command also of the general literature on the subject and discusses in detail the arguments advanced by the writers of the different countries with respect to particular matters.

Space is not available for a critical discussion of the author's views concerning the vast number of questions dealt with in the work. Only a few general remarks can be made. The author is a realist who abhors fictions. He accepts the facts as he finds them and strives to fit his theories to the facts, instead of attempting to fit the facts to his theories. He is opposed, therefore, to all endeavors to find a single legal basis for international jurisdiction in criminal matters, be it that of the place where the crime was committed or that of the national law of the offender. The fundamental idea governing the subject being, in the estimation of the author, that of social protection, a single point of contact furnishes obviously a too narrow basis of jurisdiction. The author's position that different points of contact must be chosen to meet the needs of the particular situation is perfectly sound. The author is right also in insisting that each state must determine for itself what is necessary for its own protection. The character of an act as rightful or unlawful must in the nature of things be left to the judgment of each state whose interests are affected. The result may be, of course, that an act may be lawful where done, but unlawful in some other state, but that is unavoidable if the idea of social protection as the sole basis of international jurisdiction in criminal matters is accepted.

The treatise under consideration is a monumental one in every respect. It is indispensable to all interested in this branch of legal learning.

ERNEST G. LORENZEN.

---

THE NEW CHURCH LAW ON MATRIMONY. By Rev. Joseph J. C. Petrovits. Philadelphia: J. J. McVey. 1921. pp. xvi, 458.

The publication of the new *Codex Juris Canonici*[1] started a new period in the history of the canon law. The old *Glossatores, Summistae, Tractatistae* and *Commentatores* became in the main obsolete, in so far as they were concerned with the practical interpretation of the laws, and the need of new commentaries was felt immediately by the ecclesiastical courts the world over. The canonists, who, after a long period of relative neglect found themselves at once in a position of high importance, did not lose time in getting to work and in the short period of four years the literature dealing with the new Code has reached the respectable size of about one hundred volumes.

Almost all of them consist of comments on some special point of ecclesiastical law and are written from a practical rather than from a purely scientific point of view. The single fact that almost all this new literature is written in modern languages and not in the customary Latin of the glorious canonical tradition shows that its aim is to provide the clergy, especially parish priests, with practical manuals which it will be easy for them to consult in their daily pastoral work.

Another important characteristic of all this new literature is its uniformity both in spirit and in language. The time when there were within the Catholic clergy opposite schools of canon law, diverging in matters of fundamental importance, is long past, and the strong centralization of power in the Roman Curia has brought with it a remarkable unification in the new canonical tradition. Never was it so true as it is to-day that the Catholic world receives its law from Rome. "*Ex occidente Lex.*"

[1] Rome, May, 1917.

Only a few months after the publication of the code a series of articles dealing with its various parts were published in the *Ecclesiastical Review*,[2] and these have been reprinted in the form of a book.[3] Almost at the same time, the Benedictine Fr. Carles Augustine Bachofen published the first four volumes of a general commentary on the Code.[4] Fr. Bachofen was for nine years professor of canon law at the Benedictine College of St. Anselm in Rome, and had therefore an intimate knowledge of the methods and traditions of the Roman Curia. His comments are remarkable for their conciseness and for their strictly legal character; "the commentary shall not be encumbered with moralizing reflections" warns the author in his preface. The moralizing strain which at a certain period was brought into the canon law "was a disadvantage because it obscured the character of the Church as a public society and made the law appear to be an appendix of the confessional."[5] His work, however, due to its conciseness and perhaps to its rather hurried compilation, is on many points obscure and vague, and its use difficult for those members of the clergy who have not had a good training in ecclesiastical law. The work of the Rev. P. Trudel[6] is nothing more than a simple alphabetical list of topics which may be used as an index to the Code.

In a country like the United States, where the population is composed of persons belonging to all the religions of the world, and where Christians of all denominations live closely together, intermarriages between persons of different faiths are of daily occurrence and give rise to most embarrassing situations in the ecclesiastical courts of American Catholic dioceses. It is not surprising, therefore, that special attention has been paid in this country to the law of marriage and that more than one comment on this section of the Code has already appeared. The first was published by the Very Rev. H. A. Ayrinhac, for more than twenty-five years professor of canon law at the Catholic Seminary of San Francisco.[7] As the author himself says, his book contains "a brief explanation, incomplete and fragmentary" of the Canons concerning the procedure and the casuistry of Catholic marriage; and although very useful for the time being, could not be of permanent value, especially in view of the recent authoritative decisions as to the interpretation of the various Canons rendered by the Commission established in Rome for this exclusive purpose. The need of a more complete and substantial work on the law of marriage has been keenly felt and such a volume has now appeared. It is the work of Rev. Joseph J. C. Petrovits, prepared under the guidance of Mgr. Filippo Bernardini, professor of canon law in the Catholic University of America at Washington; and is a really valuable contribution to the canonical literature of Christian marriage.[8]

Dr. Petrovits' book is divided into fourteen chapters, the first three dealing with general notions and pre-matrimonial transactions; the fourth, fifth, and sixth with matrimonial impediments; the seventh with matrimonial consent; and the eighth with the form of matrimonial celebration. The following three chapters summarize briefly the minor topics of marriage of conscience, time and place of marriage and the effects of marriage. The last three concern the

---

[2] Philadelphia, October, 1917–August, 1918.

[3] THE NEW CANON LAW IN ITS PRACTICAL ASPECTS. Philadelphia: J. J. McVey. 1918.

[4] A COMMENTARY ON THE NEW CODE OF CANON LAW. St. Louis: Herder. 1918. Vol. I., Introduction and General Rules: Vol. II., Clergy and Hierarchy: Vols. III. and IV., The Sacraments.

[5] *Ibid.*, p. 56.

[6] A DICTIONARY OF CANON LAW. St. Louis: Herder. 1919.

[7] MARRIAGE LEGISLATION IN THE NEW CODE OF CANON LAW. New York: Benziger. 1919.

[8] THE NEW CHURCH LAW ON MATRIMONY. Reviewed here.

special problems of separation of consorts, validation of marriage and second nuptials. An accurate and most serviceable index and a comprehensive bibliography close the volume. An important feature of the book is the historical survey which in each chapter precedes the analysis of and comments upon the Canons, giving a brief summary of the various opinions on debated questions and the final solution given to them in the new Code. The great canonical works of the post-Tridentine period are quoted frequently, and much more the recent literature of the Roman school, especially Wernz, Gennari and Gasparri.

It may be noticed, however, that the author, as is often the case with those who write extensive works on a special topic, overemphasizes the importance of some questions of detail which to-day have lost almost all their practical value. And above all, it would seem that he is too sanguine in his statement that the subject of matrimony has undergone some fundamental changes as viewed in the light of the new Code.[9] As a matter of fact, the new Code reflects almost entirely the regulations already prescribed by the constitution *Ne temere* and in matters of impediments keeps the fundamental distinction introduced by the constitution *Sapienti consilio*. It will be difficult to find a point of really fundamental importance in which ecclesiastical discipline as to marriage may be said to have been revolutionized by the new Code, unless one is willing to consider as fundamental Canon 1017, which in matter of espousals abrogates the right (*jus ad rem*) which in the past was generally attributed to the parties making an engagement;[10] or Canon 1070, which states that the diriment impediment of disparity of worship obtains only in cases where one party to the marriage is baptised in the Catholic Church,[11] and therefore recognizes as valid a marriage contracted between an unbaptized person and a baptized non-Catholic. No doubt this latter provision is of some practical importance, and as Mgr. Meehan says, "it puts an end to much work and worry for diocesan matrimonial courts in the United States;"[12] but this law is an exception which does not modify at all the really fundamental principle on which is based the assumed jurisdiction of the church over marriages of all baptized persons, even though they be non-Catholics. On this fundamental point the Code has in fact strengthened the Roman tradition that "no law, no custom, can introduce an indiscriminate exemption of heretics, schismatics, apostates, or the excommunicated from canonical impediments,"[13] and in its Canon 1016 has definitely banished the virtually opposite opinion of some great canonists like Schmalzgrueber.

In the same way the principle so dear to the Roman Curia, "*Nihil innovetur quod traditum est*," is fully applied to the fundamental question of the competence of the civil authority with regard to marriage. The dogmatic teaching of the sacramental character of matrimonial contracts does not allow the canonists any freedom on this point, and the new Code condemns impliedly the laws of those countries which recognize as valid the marriage of Christian persons contracted outside the Church and which do not allow marriages contracted only before the Church to have civil effects. "The state transgresses the legitimate limits of its jurisdiction when it imposes a penalty, which results in depriving Christians of the natural civil effects of their valid marriage."[14] But in practice the canon law comes to a compromise and admits that the civil authority is within its rights in requiring the civil registration of marriages validly contracted before the Church, and in imposing a penalty for failure to

---

[9] THE NEW CHURCH LAW ON MATRIMONY, Preface.
[10] *Ibid.*, p. 37.
[11] *Ibid.*, p. 143.
[12] PAPERS REPRINTED FROM THE ECCLESIASTICAL REVIEW, p. 38.
[13] THE NEW CHURCH LAW ON MATRIMONY, p. 31.
[14] *Ibid.*, p. 32.

comply with its regulation. And according to a great canonist, Cardinal Gasparri, this penalty may be justly extended even to the point "of depriving the guilty ones of the civil effects of the marriage." [15]

The relatively new feature of this epoch-making codification of the Canon law is rather the spirit in which it is made; and this has fundamentally affected the Code as promulgated.[16] The dogmatic and strictly autocratic government of the Church finds in this Code its best expression; in it the last survivals of Gallicanism, Febronianism and Josephism which affected so deeply the whole ecclesiastical legislation during the seventeenth and eighteenth centuries, reviving or shaping anew doctrines which had been formulated by the great Caesarean jurists of the middle ages, are completely swept away. Never before has the Church had the opportunity of doing this without paying a penalty for it. Difficult entanglements with the various governments, concordats with dynasties and nations, and territorial interests in connection with their temporal power, compelled the popes to carry out a policy of continuous compromises, in which many fundamental principles of canon law were sacrificed. The fall of temporal power, and the separation of Church and State, has given back to the Church its freedom in the realm of strictly ecclesiastical legislation, and Rome is making a good use of such freedom, in order to bring about that strong centralization of power which is the logical implication of its assumed divine right and its autocratic constitution.

GEORGE LA PIANA.

---

A SELECTION OF CASES ON THE LAW OF DOMESTIC RELATIONS AND PERSONS. By Edwin H. Woodruff. 3d edition, revised and enlarged. New York: Baker, Voorhis & Company. 1920. pp. xviii, 753.

This book is a new edition of Professor Woodruff's well-known case book on Domestic Relations. The editor states in his preface [1] that he has omitted or reduced to notes thirty-two cases which appeared in previous editions, while forty-four new cases have been added. Among these new cases which are of interest may be mentioned that of *Thompson* v. *Thompson*,[2] in which a New Jersey court declined to give credit to a New York decree granting a separation, because the husband, a non-resident of New York, had been served only by publication. Many new notes have also been added by Professor Woodruff.

The most interesting question concerning the book is whether it would not have been better if it had contained fewer topics, and at the same time had given on each topic a greater number of cases. It was the opinion of the late Professor John Chipman Gray, "that a collection of cases should not attempt to cover too much ground, but that the cases should be multiplied on the crucial topics." [3] He further adds: "A single case on a subject has little advantage over a text-book. It is only by presenting a doctrine in many aspects that the best results can be reached." [4] Most teachers using the case system of instruction will probably agree with the foregoing statements. Indeed, the fundamental difference between the case system of instruction and the text-book system is the emphasis placed by the former on the importance of training in legal reasoning as opposed to the acquisition of mere legal information; and training

---

[15] TRACTATUS CANONICUS DE MATRIMONIO (Paris, 1891), p. 280.

[16] *Cf.* ULRICH STUTZ, DER GEIST DES CODEX JURIS CANONICI. Stuttgart. 1918.

[1] See p. iii.

[2] 89 N. J. Eq. 70, 103 Atl. 856 (1918); WOODRUFF, CASES ON DOMESTIC RELATIONS, 3 ed., 339.

[3] See 1 GRAY, CASES ON PROPERTY, ed., "Preface to the Second Edition."

[4] *Ibid.*